

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

July 29, 2009

DIVISION ONE

B212858 Los Angeles County, D.C.F.S. (Not for Publication)
 v.
 E.W.

The order terminating parental rights is reversed and remanded for the sole purpose of securing compliance with ICWA. The juvenile court is directed to order DCFS to make a proper inquiry regarding J.W.'s Indian ancestry and to provide proper notice to any appropriate tribes, the Bureau of Indian Affairs, and the Secretary of the Interior, pursuant to ICWA, and to submit such notices to the juvenile court. The juvenile court shall thereafter make findings concerning the adequacy of DCFS's compliance with the ICWA notice provisions and regarding the applicability of ICWA to this case. If no tribe indicates that J.W. is an Indian child, then the juvenile court is ordered to reinstate its order terminating parental rights forthwith. If a tribe indicates J.W. is an Indian child, the juvenile court is ordered to proceed in accordance with ICWA.

Miller, J. (Assigned)

We concur: Mallano, P.J.
 Rothschild, J.

B207712 Playa Vista LLP (Not for Publication)
 v.
 Mercury Air Group, Inc.

The judgment is affirmed. Mercury shall recover its costs on appeal.

Miller, J. (Assigned)

I concur: Mallano, P.J.
I dissent: Rothschild, J. (Opinion)

DIVISION ONE (continued)

B207319 People (Not for Publication)
v.
Collin Davis

The attempted murder conviction in court 4, and its attendant firearm enhancement are reversed. In all other respects, the judgment is affirmed. The trial court is directed to issue an amended abstract of judgment reflecting that the firearm enhancement four counts 1 through 3 was imposed pursuant to section 12022.53, subdivision (3)(1).

Miller, J. (Assigned)

We concur: Mallano, P.J.
 Rothschild, J.

DIVISION TWO

B210518 Los Angeles County, D.C.F.S. (Not for Publication)
v.
S.L.

The jurisdictional order is reversed and the dispositional order is moot.

Ashmann-Gerst, J.

We concur: Doi Todd, Acting P.J.
Chavez, J.

July 29, 2009 (Continued)

DIVISION TWO (continued)

B211252 People (Not for Publication)
v.
Fuller

The imposition of the habitual offender enhancement within the meaning of section 667, subdivision (a) is reversed, that enhancement is stricken and the judgment is otherwise affirmed. The matter is remanded to the trial court for resentencing.

Ashmann-Gerst, J.

We concur: Boren, P.J.
 Chavez, J.

DIVISION THREE

B215283 Los Angeles County, D.C.F.S.
c/w v.
B216440 H.H.

Filed order consolidating above captioned appeals.

DIVISION FIVE

B208164 Tony Neman (Not for Publication)
v.
Federal Deposit Insurance Corp.as Receiver of Commercial Capital Bank

The judgment is affirmed. Respondent(s) to recover costs.

Turner, P.J.

We concur: Armstrong, J.
Kriegler, J.

DIVISION FIVE (continued)

B210479 People (Not for Publication)
v.
Jayson Devon Mazzarella

The judgment is modified as set forth in the immediately preceding paragraph. Upon remittitur issuance, the trial court is to determine defendant's ability to pay the fine and assessment. The judgment is affirmed in all other respects. The clerk is to prepare an amended abstract of judgment and forward it to the Department of Corrections and Rehabilitation.

“Third, we asked the parties to address whether the section 1202.5, subdivision (a) fine should be modified. We conclude the section 1202.5, subdivision (a) fine should be modified to add: the \$10 section 1464, subdivision (a)(2) penalty assessment; the \$7 Government Code section 76000, subdivision (a)(1) penalty assessment; the \$2 Government Code section 76000.5, subdivision (a)(1) penalty assessment; the \$2 section 1465.7, subdivision (a) state surcharge; \$3 Government Code section 70372, subdivision (a)(1) state court construction penalty; Government Code section 76104.6, subdivision (a)(1) \$1 deoxyribonucleic acid penalty; and Government Code section 76104.7, subdivision (a) \$1 deoxyribonucleic acid state-only penalty. Defendant’s request that we remand the fine issue to the trial court for an ability to pay determination is granted. The trial court is to actively and personally insure the clerk accurately prepares a correct amended abstract of judgment which reflects the modifications we have ordered. (*People v. Acosta* (2002) 29 Cal.4th 105, 109, fn. 2; *People v. Chan* ((2005) 128 Cal.App.4th 408, 425-426).”

Turner, P.J.

I concur: Armstrong, J.
I concur and dissent : Mosk, J. (Opinion)

DIVISION FIVE (continued)

B212999 People (Not for Publication)
v.
Valodia Balabekyan

The judgment is modified as follows. The additional penalty assessments, penalties, and the surcharge discussed in the body of the opinion are to be added to the Penal Code section 1202.5, subdivision (a) fine and defendant is to receive 477 days of actual presentence custody credit and 71 days of conduct credit for a total presentence custody credit of 548 days. The abstract of judgment is to be modified as discussed in part II(B) of the body of the opinion. The judgment is affirmed in all other respects.

II. DISCUSSION

B. Abstract of Judgment Problems

First, defendant argues the sentence on count 7, firearm assault, must be stayed under section 654, subdivision (a). Defendant reasons counts 1, attempted murder, and 7, assault with a firearm, constituted a single act committed during an indivisible course of conduct. We agree with the Attorney General that the trial court orally stayed count 7 in compliance with section 654, subdivision (a), but the abstract of judgment incorrectly notes it was imposed. The oral pronouncement controls. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Mesa* (1975) 14 Cal.3d 466, 471.) The abstract of judgment must therefore be corrected to state that the sentence under count 7 is stayed pursuant to section 654, subdivision (a). Second, the abstract of judgment omits the extent of the sentences orally imposed as to count 6 and counts 8 through 11 but stayed pursuant to section 654, subdivision (a). Thus, the abstract of judgment must also be corrected to show the duration of the stayed sentences as to count 6 (6 years) and counts 8 through 11 (4 years each).

Turner, P.J.

We concur: Armstrong, J.
 Mosk, J.

DIVISION FIVE (continued)

B204874 Kevin Farr
 v.
 California Coastal Commission et al.,
 Michael Doyle, et al.,

On April 9, 2009, this court filed its opinion in the above-entitled appeal, which became final as to this court thirty-days after filing. (Cal. Rules of Court, rule 8.264(b)(1).) On April 29, 2009, a timely request to publish this court's opinion was filed. No action having been taken by this court prior to the finality of the opinion, this court's order of May 19, 2009, granting publication was of no effect, given that this court was without jurisdiction to order publication.

Armstrong, J. Turner, P.J. Mosk, J.

B210705 People (Certified for Partial Publication)
 v.
 Luis Castellanos

The \$10 section 1202.5, subdivision (a) fine is reversed. Upon remittitur issuance, the trial court is to determine whether defendant has the ability to pay the section 1202.5, subdivision (a) fine as discussed in the body of this opinion. The judgment is modified to reflect 172 days of actual presentence custody credit rather than 173 days. Upon remittitur issuance, after reconsidering the ability to pay issue, the superior court clerk shall amend the abstract of judgment to conform to this decision, and shall forward the amended abstract to the Department of Corrections and Rehabilitation. The judgment is affirmed in all other respects.

Turner, P.J.

I concur: Armstrong, J.
I concur : Kriegler, J. (Opinion)

DIVISION SIX

B213307 Ventura County Public Social Services Agency (Not for Publication)
v.
J.C.
In re B.B., a Person Coming Under the Juvenile Court Law

The judgment is affirmed.

Coffee, J.

We concur: Gilbert, P.J.
 Yegan, J.

B210247 Moore (Not for Publication)
v.
Regents of the University of California

The judgment is affirmed. Respondents shall recover costs on appeal.

Gilbert, P.J.

We concur: Yegan, J.
Perren, J.

DIVISION SEVEN

[illegible]

The judgment is affirmed.

Jackson, J.

We concur: Woods, Acting P.J.
Zelon, J.